

MMX-CV-19-6024979-S	:	SUPERIOR COURT
MICHAEL A. McALEAR	:	J.D. OF MIDDLESEX
V.	:	AT MIDDLETOWN
WESLEYAN UNIVERSITY	:	JUNE 12, 2019

AMENDED COMPLAINT

I. Parties

1. The Plaintiff, Michael McAlear, is a tenured professor of Molecular Biology and Biochemistry at Wesleyan University who resides at 145 Mount Vernon Street in Middletown, Connecticut.

2. The Defendant, Wesleyan University ("Wesleyan" or "the University"), is a private, coeducational, non-sectarian school of liberal arts and sciences, which has a business address of 45 Wyllys Avenue, Middletown, Connecticut. At all times set forth herein Michael Roth was the President and Chief Executive Officer of the University.

II. Factual Background

3. On Friday, Nov 11, 2016, the Plaintiff was passing through the University's Exley Science Center when a group of protesting students stopped him to tell him that Wesleyan faculty and members of the Wesleyan university administration including Provost Joyce Jacobsen and President Michael Roth were sexual predators and promoters of sexual violence. The students had covered the wall with banners and posters depicting the names and faces of several faculty and administrators as sexual predators. The plaintiff told the students that he

thought their protest was over-the-line and slanderous. Immediately following that exchange, the Plaintiff met Provost Jacobsen in Olin library where he told her about the protest, banners and posters.

4. On Sunday, November 13, 2016 an email from one of the protestors was sent to a group called the Wes Student Union describing the start of a new campaign targeting the Plaintiff as a predator, including the directive for the members of the group to enroll in his classes.

5. On Wednesday, November 16, 2016 the Plaintiff was informed by Dean Joe Knee that posters with plaintiff's name and face were put up around campus labeling him as a 'Sexual Predator'. The Plaintiff met with the University Provost, Joyce Jacobsen to express his deep concerns, and he was assured by Provost Jacobsen and the University President Michael Roth that they took the harassment very seriously and 'that the administration would do what they could to stop the slander.' The Plaintiff asked to be kept informed if there were other offensive postings, and to be kept informed concerning the identification of, and consequences to the offending students.

6. On Friday, November 18, 2016 Provost Jacobsen emailed the Plaintiff that she had contacted the University Residential Life and Public Safety departments to alert 'to attempt to identify the perpetrators.'

7. On February 28, 2017 the Plaintiff became aware that more posters labeling him a sexual predator were put up around campus, and that the students had placed the images online in the Wesleying blog.

8. On March 1, 2017 the University President, Michael Roth emailed the plaintiff about the posters writing that "...this is outrageous. We will do our best to put a stop to it and hold those responsible accountable."

9. On March 2, 2017 the University Provost, Joyce Jacobsen emailed the plaintiff a link to an online article entitled "This anonymous Wesleyan student is posting flyers calling 3 professors "sexual predators." She wrote that the article, "makes pretty clear that reprisal is indeed why they have singled you out. This will be useful evidence for when we find out who the posting person is."

10. On April 13, 2017 Provost Jacobsen emailed the Plaintiff that "a small set of students" were handing out more flyers denigrating him at President Roth's Wesfest talk for incoming students and their families. She informed the Plaintiff that "The students have been identified and will be questioned regarding this activity."

11. The next day, April 14, 2017 the Plaintiff asked Provost Jacobsen to be informed about "what came of the questioning", but he never received a response.

12. In or about May 15, 2017, the plaintiff was informed by Provost Jacobsen that Debbie Colucci of the University title IX office emailed 4 students who were known to be involved with the protests asking them what the Plaintiff had done with regards to being a sexual predator. Jacobson informed plaintiff that no inappropriate behavior or accusations were reported. However, the plaintiff was not informed until the following February, 2018 that one of the four students had, in fact, admitted to participating in the distribution of the flyers.

13. More flyers labeling the plaintiff a 'Sexual Predator' were put up around campus and on Middletown City streets around graduation week in May, 2017, and then again in November, 2017. In addition, the University Public Safety department obtained videotape of an identified student suspected of distributing the flyers in the University Usdan Center. However, the Plaintiff was not informed about any of these events at the time they occurred.

14. On February 26, 2018 the Plaintiff was informed by Associate Vice President of Facilities Joyce Topshe that her office had taken down piles of the offending posters and flyers over the preceding year and a half, and that a University Public Safety officer had recently seen "stacks" of the 'Sexual Predator' posters in a student office at the University Organizing Center. That office was provided with computer, printing and copying equipment by the University for use by the students. No action was taken.

15. In February, 2018 the Plaintiff read in his teaching evaluations from the previous fall semester that he had been accused of being a 'Sex Offender', and that he had "multiple sexual harassment and assault allegations against him by both students and faculty." While verifiably untrue, these claims became part of plaintiff's permanent teaching record available for view by his department Chair, Dean and Administration. The Plaintiff complained to Robert Lane, the Molecular Biology and Biochemistry Chair and to Michael Whaley the Vice President for Student Affairs that such comments were false, demeaning and hostile. The Plaintiff was told by Provost Joyce Jacobsen through Michael Whaley that the evaluations were anonymous so nothing could be done about them.

16. On March 29, 2018 Provost Jacobsen wrote the Plaintiff about his concerns relating to the harassment campaign and that she understood that "this

series of events is upsetting and want to reiterate that the University has taken action when possible and appropriate". She went on to write that the Administration tried "to see if there was any way to identify students or others posturing to date and there is not.". Provost Jacobsen wrote that "Antonio Farias and Debbie Colucci both informed you that the university has followed up and to date, no student has chosen to make a formal allegation of misconduct against you. If there is ever such an allegation, it would be thoroughly investigated. ... Again, as we have said previously, we take the culture and climate of our university seriously and have specific processes in place for follow-up when situations arise that are actionable; but not every situation is actionable."

17. On April 27, 2018 the Plaintiff filed a complaint with the University's Faculty Rights and Responsibilities Committee (FCRR) against Joyce Jacobson, the Provost of the University. Plaintiff's complaint alleged that Jacobsen failed to protect and defend his rights as a tenured faculty member by not taking sufficient concerted action to identify or stop the persons who were conducting the degrading poster campaign. In so doing, the plaintiff claimed that Jacobson ignored his right to be "... protected against actions that may be harmful to the health or emotional stability of the individual or that degrade the individual or infringe upon his/her personal dignity."

18. Upon receipt of plaintiff FCRR complaint Jacobson enlisted another professor, Stephen Devoto to inform the Plaintiff to drop his complaint against her because plaintiff would not want her to testify against him. The Plaintiff understood and believed Jacobson's message to be a threat. He did not withdraw his complaint.

19. On January 30, 2019 President Roth met with the plaintiff and said that contrary to his earlier statement that the posters were “outrageous and the University would do everything to put a stop to it, ...” that he had changed his mind. He did not agree that the Standards of Conduct within the University Handbook were ‘rights’, and that if a student stepped forward admitting to putting up the posters, he wouldn’t do anything about it.

III. CLAIMS

First Count - Breach of Contract

20. Paragraphs 1 through 19 as set forth above are hereby incorporated into this First Count as if fully set forth herein.

21. Section 3.4 of the Wesleyan University Faculty Handbook entitled ‘Standards and Procedures for Regulating Conduct’ provides in material part that “Faculty members at Wesleyan ... hold contracts — in fact, after achieving tenure, lifetime contracts...” with the University.

22 Subsection 7 of Section 3.1 the Wesleyan University Faculty Handbook establishes plaintiff’s “right to be protected against actions that may be harmful to (his) health or emotional stability ... or that degrade (him) or infringe upon his personal dignity.”

23. Defendant University acting by its agents, apparent agents and employees including its President Michael Roth and its Provost Joyce Jacobson breached plaintiff’s contract with the University by failing to immediately intervene, stop and protect the plaintiff from the continuous harassment generated by the

publication of the false, malicious and degrading description of him as a “sexual predator.” As a result of University’s arbitrary and capricious failure to enforce the aforesaid prohibition, the plaintiff sustained mental and physical pain, loss and permanent reputational damage.

Second Count – Breach of the Implied Covenant of Good Faith and Fair Dealing

24. Paragraphs 1 through 23 as set forth above are hereby incorporated into this Second Count as if fully set forth herein.

25. Defendant acting by its agents, apparent agents and employees including its President Michael Roth and its Provost Joyce Jacobson acted in bad faith by failing to immediately intervene to stop the continuous harassment of the plaintiff by the publication of the false, malicious and degrading description of him as a “sexual predator” when they knew that such description posed a substantial risk of permanent personal and professional harm to the plaintiff. Such arbitrary and capricious failures deprived plaintiff of the benefits he expected to receive from his contract thereby causing him to sustain mental and physical pain, loss and permanent reputational damage.

Third Count – Negligence

26. Paragraphs 1 through 25 as set forth above are hereby incorporated into this Third Count as if fully set forth herein.

27. Defendant acting by its agents, apparent agents and employees including its President Michael Roth and its Provost Joyce Jacobson breached its duty of care to plaintiff by (a) failing to immediately intervene to stop the continuous

harassment of the plaintiff by the publication of the degrading description of him as a "sexual predator" when they knew that such description was false and posed a risk of substantial harm to the plaintiff ; (b) failing to inform plaintiff of the status of the purported investigation regarding the identification of the individuals who composed and published the degrading posters; (c) by providing the publishers with University space and equipment to enable the continuous composition and publication of the degrading posters; (d) by falsely leading plaintiff to believe that the University would put a stop to what they admitted to be false "outrageous" branding of the plaintiff as a sexual predator; (e) by failing to inform the plaintiff of the names of the individuals the University had identified as participants in the publication of the posters; (f) by the actions of the University Provost Joyce Jacobson in threatening plaintiff to withdraw his FCRR complaint against her and (g) by allowing plaintiff to be continuously branded a criminal despite the obligation, authority and ability to immediately stop it. As a result of such failures the plaintiff was caused to sustain mental and physical pain, loss and permanent reputational damage.

Fourth Count – Negligent Infliction of Emotional Distress

28. Paragraphs 1 through 27 as set forth above are hereby incorporated into this fourth Count as if fully set forth herein

29. Defendant acting by its agents, apparent agents and employees including its President Michael Roth and its Provost Joyce Jacobson failed to defend and protect plaintiff from being labeled a "sexual predator" and that such labeling him infringed on his personal dignity and professional reputation thereby causing him to suffer severe emotional distress, loss and permanent reputational damage

Fifth Count - Recklessness

30. Paragraphs 1 through 29 as set forth above are hereby incorporated into this Fifth Count as if fully set forth herein.

31. Defendant acting by its agents, apparent agents and employees including its President Michael Roth and its Provost Joyce Jacobson was consciously aware of the fact that the continuous publication of the false and degrading posters created a substantial risk of harm to the plaintiff.

32. Notwithstanding the defendant's conscious awareness of the risk to the plaintiff, the defendant University failed to eliminate the risk. In fact, by failing to stop the poster campaign and knowingly allowing it to continue, the University exacerbated and increased the risk of harm to the plaintiff thereby making damage and injury to him more likely. Consequently, the plaintiff was caused to suffer severe emotional distress, pain, loss and permanent reputational damage

33. The aforesaid injuries, damage and harm suffered by the plaintiff were caused by the reckless, callous indifference or wanton misconduct of the defendant,

Sixth Count – Promissory Estoppel

34. Paragraphs 1 through 33 as set forth above are hereby incorporated into this Fourth Count as if fully set forth herein.

35. Plaintiff relied on University's assurance set forth in subsection 7 of Section 3.1 of the University's Faculty Handbook that, as a member of the University, he had the right to be protected against actions harmful to his emotional

health and stability including actions that degrade him and infringe upon his personal dignity. The University's arbitrary and capricious disregard of plaintiff's rights to be protected from the publication of the malicious degrading posters caused him to sustain physical and mental injuries, damages, loss and permanent reputational damage.

Seventh Count – Defamation Per Se

36. Paragraphs 1 through 35 as set forth above are hereby incorporated into this Fourth Count as if fully set forth herein.

37. Defendant provided its campus facilities including office space, and printing and copying equipment to its students who used those facilities to prepare and publish the defamatory posters that pictured plaintiff and falsely labeled him a "sexual predator." In so doing, the defendant, acting in bad faith, aided and abetted the malicious publication of the defamatory posters to persons throughout the University community.

38. As a consequence of the aforesaid defamatory conduct of the defendant, plaintiff was caused to suffer harm including physical and mental pain, emotional distress and reputational damage.

WHEREFORE, the Plaintiff claims Damages including punitive damages within the jurisdiction of the court.

THE PLAINTIFF,

MICHAEL A. McALEAR

By



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STATEMENT OF AMOUNT IN DEMAND

The amount in demand is in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interests and costs.

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CERTIFICATION

I certify that a copy of this document was or will immediately be mailed or delivered electronically on this 12th day of June, 2019 to:

Patricia E. Reilly, Esq.
MURTHA CULLINA, LP
265 Church Street
New Haven, CT 06510



Thomas E. Minogue